



Utah Sentencing Commission

SUBCOMMITTEE NOTES & VOTES

JENNIFER VALENCIA, DIRECTOR

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ANOMALIES SUBCOMMITTEE MEETING JUNE 2

Co-Chairs: Paul Boyden & Rich Mauro

In attendance: Paul Boyden, Rich Mauro, Brian King, Mike Haddon, Camille Neider, Clayson Quigley, William Carlson, Kim Gibb, MaryLou Emerson, Brendan McCullagh, Matthew Grow

Blue underline indicates current penalty in statute

**Red italics are informal notes by JV*

17-43-308 Specified treatments prohibited -- Criminal penalties.

(1) It is a misdemeanor to give shock treatment, lobotomy, or surgery to anyone without the written consent of the person's next of kin or legal guardian. Services provided under this part are governed by Title 58, Chapter 67, Utah Medical Practice Act.

(2) It is a felony to give psychiatric treatment, nonvocational mental health counseling, case-finding testing, psychoanalysis, drugs, shock treatment, lobotomy, or surgery to any individual for the purpose of changing his concept of, belief about, or faith in God.

Renumbered and Amended by Chapter 22, 2003 General Session

** No record this offense has ever been filed*

** Is this conduct being regulated through other statutes or rules?*

** Hold*

41-4-9 Persons violating provisions -- Penalty. (Financing Dealers/Purchasers/Motor Veh)

Any person who violates any of the provisions of this act, any person who is a party to any agreement or understanding, or to any contract prescribing any condition prohibited by this act, and any employee, agent or officer of any such person who shall participate, in any manner, in making, executing, enforcing, performing or in urging, aiding or abetting in the performance of any such contract, condition, agreement or understanding and any person who pays or gives or contracts to pay or give any thing or service of value prohibited by this act, and any person who receives or accepts or contracts to receive or accept any thing or service of value prohibited by this act, shall be deemed guilty of a felony and upon conviction thereof shall be punished by a fine of not less than \$50 nor more than \$5,000, or be imprisoned not less than six months nor more than one year, or by both such fine and imprisonment. Each day's violation of this provision shall constitute a separate offense.

No Change Since 1953

** No record this offense has ever been filed*

** Is this conduct being regulated through other statutes or rules?*

** Hold*

67-1a-7 Use and custody of great seal.

(1) Except as otherwise provided by law, the lieutenant governor, or the lieutenant governor's designee, is authorized to use or affix the Great Seal of this state to any document whatever and only in pursuance of law, and is responsible for its safekeeping. Any person who illegally uses the Great Seal of this state, or such seal when defaced, [is guilty of a felony](#).

Enacted by Chapter 68, 1984 General Session

* *Has been filed once – 1999*

* *Alternative penalties may be more effective – injunction or financial penalty*

* *What constitutes illegal use or defacement?*

* *Consensus it should not be a felony*

* *Hold*

76-6-409.6 Use of telecommunication device to avoid lawful charge for service -- Penalty.

(1) Any person who uses a telecommunication device with the intent to avoid the payment of any lawful charge for telecommunication service or with the knowledge that it was to avoid the payment of any lawful charge for telecommunication service is guilty of:

(a) a [class B misdemeanor](#), if the value of the telecommunication service is less than \$300 or cannot be ascertained;

(b) a [class A misdemeanor](#), if the value of the telecommunication service charge is or exceeds \$300 but is not more than \$1,000;

(c) a [third degree felony](#), if the value of the telecommunication service is or exceeds \$1,000 but is not more than \$5,000;

(d) a [second degree felony](#), if:

(i) the value of the telecommunication service is or exceeds \$5,000; or

(ii) the cloned cellular telephone was used to facilitate the commission of a felony.

(2) Any person who has been convicted previously of an offense under this section is guilty of a [second degree felony](#) upon a second conviction and any subsequent conviction.

Amended by Chapter 78, 1997 General Session

* *No record subsection (1)(d)(ii) has ever been filed*

* *Is this conduct being charged under communications fraud statutes?*

* *Drafted originally for phone company – still needed?*

* *Hold*

76-6-412 Theft -- Classification of offenses -- Action for treble damages.

(1) Theft of property and services as provided in this chapter is punishable:

(a) as a [second degree felony](#) if the:

(i) value of the property or services is or exceeds \$5,000;

(ii) property stolen is a firearm or an operable motor vehicle; or

(iii) property is stolen from the person of another;

(b) as a [third degree felony](#) if:

(i) the value of the property or services is or exceeds \$1,500 but is less than \$5,000;

(ii) the value of the property or services is or exceeds \$500 and the actor has been twice before convicted of any of the offenses listed in Subsections (1)(b)(ii)(A) through (1)(b)(ii)(C), if each prior offense was committed within 10 years of the date of the current conviction or the date of the offense upon which the current conviction is based and at least one of those convictions is for a class A misdemeanor:

(A) any theft, any robbery, or any burglary with intent to commit theft;

(B) any offense under Title 76, Chapter 6, Part 5, Fraud; or

(C) any attempt to commit any offense under Subsection (1)(b)(ii)(A) or (B);

(iii) in a case not amounting to a second degree felony, the property taken is a stallion, mare, colt, gelding, cow, heifer, steer, ox, bull, calf, sheep, goat, mule, jack, jenny, swine, poultry, or a fur-bearing animal raised for commercial purposes; or

(iv)

- (A) the value of property or services is or exceeds \$500 but is less than \$1,500;
- (B) the theft occurs on a property where the offender has committed any theft within the past five years; and
- (C) the offender has received written notice from the merchant prohibiting the offender from entering the property pursuant to Section 78B-3-108;
- ~~(v) the actor has been twice before convicted of any of the offenses listed in Subsections (1)(b)(ii)(A) through (1)(b)(ii)(C), if each prior offense was committed within 10 years of the date of the current conviction or the date of the offense upon which the current conviction is based and the value of the property stolen is or exceeds \$500 but is less than \$1,500; or~~
- ~~(v) (vi)~~ the actor has been previously convicted of a felony violation of any of the offenses listed in Subsections (1)(b)(ii)(A) through (1)(b)(ii)(C);
- (c) as a class A misdemeanor if:
- (i) the value of the property stolen is or exceeds \$500 but is less than \$1,500;
- (ii)
- (A) the value of property or services is less than \$500;
- (B) the theft occurs on a property where the offender has committed any theft within the past five years; and
- (C) the offender has received written notice from the merchant prohibiting the offender from entering the property pursuant to Section 78B-3-108; or
- (iii) the actor has been twice before convicted of any of the offenses listed in Subsections (1)(b)(ii)(A) through (1)(b)(ii)(C), if each prior offense was committed within 10 years of the date of the current conviction or the date of the offense upon which the current conviction is based; or
- (d) as a class B misdemeanor if the value of the property stolen is less than \$500 and the theft is not an offense under Subsection (1)(c).
- (2) Any individual who violates Subsection 76-6-408(1) or Section 76-6-413, or commits theft of property described in Subsection 76-6-412(1)(b)(iii), is civilly liable for three times the amount of actual damages, if any sustained by the plaintiff, and for costs of suit and reasonable attorney fees.

Amended by Chapter 347, 2017 General Session

- * *(1)(b)(v) should be stricken for internal consistency*
- * *Is current (1)(b)(vi) now also inconsistent? (3rd degree for current offense only has prior felony requirement, doesn't have \$500 threshold listed. Could still result in felony conviction with minimal value on current offense.)*
- * *Motion and unanimous support for revisions noted above (as clean up).*
- * *If entire section is re-considered, priority is to redraft with greater clarity and consistency with \$500 threshold.*

76-6-514 Bribery or threat to influence contest.

A person is guilty of a felony of the third degree if:

- (1) With a purpose to influence any participant or prospective participant not to give his best efforts in a publicly exhibited contest, he confers or offers or agrees to confer any benefit upon or threatens any injury to a participant or prospective participant; or
- (2) With a purpose to influence an official in a publicly exhibited contest to perform his duties improperly, he confers or offers or agrees to confer any benefit upon or threatens any injury to such official; or
- (3) With a purpose to influence the outcome of a publicly exhibited contest, he tampers with any person, animal, or thing contrary to the rules and usages purporting to govern the contest; or
- (4) He knowingly solicits, accepts, or agrees to accept any benefit, the giving of which would be criminal under Subsection (1) or (2).

Enacted by Chapter 196, 1973 General Session

- * *No record it has ever been filed*
- * *May still have some deterrent value (points shaving)*
- * *Hold*

76-6-516 Conveyance of real estate by married man without wife's consent.

Any married man who falsely represents himself as unmarried and under such representation knowingly conveys or mortgages real estate situate in this state, without the assent or concurrence of his wife when such consent or concurrence is necessary to relinquish her inchoate statutory interest therein, is guilty of a felony of the third degree.

Enacted by Chapter 196, 1973 General Session

- * *No record it has ever been filed*
 - * *Underlying conduct is problematic*
 - * *Language is outdated; should apply equally regardless of gender/sex*
 - * *Is this covered by communications fraud or otherwise sufficiently regulated?*
 - * *Hold*
-

76-8-312 Bail-jumping.

(1) A person is guilty of an offense when having been released on bail or on his own recognizance by court order or by other lawful authority upon condition that he subsequently appear personally upon a charge of an offense, he fails without just cause to appear at the time and place which have been lawfully designated for his appearance.

(2) An offense under this section is a felony of the third degree when the offense charged is a felony, a class B misdemeanor when the offense charged is a misdemeanor, and an infraction when the offense charged is an infraction.

Amended by Chapter 32, 1974 General Session

- * *See page 34 of November 2015 Report to the Judicial Council of Pretrial Release & Supervision practices:*

<https://www.utcourts.gov/resources/reports/docs/Pretrial%20Release%20and%20Supervision%20Practices%20Final%20Report.pdf>

'Bail-jumping, as a criminal offense, should be limited to felony cases and Utah Code section 76-8-312 should be amended to eliminate the offense of misdemeanor bail-jumping. Likewise, Utah Code section 77-7-22 should be amended to eliminate the misdemeanor crime of failure to appear on a citation. The committee's research showed that, at the felony level, bail-jumping charges are very rarely filed; at the justice court level, however, this charge is being filed far more than seems to be warranted. 124 other sanctions exist to address any abuse of the process at the misdemeanor level.'

- * *Hold for more substantive discussion at next meeting*
 - * *Terms "bail" and "bail-jumping" are outdated and inaccurate.*
-

76-8-802 Destruction of property to interfere with preparation for defense or war.

Whoever intentionally destroys, impairs, injures, interferes, or tampers with real or personal property with reasonable grounds to believe that the act will hinder, delay, or interfere with the preparation of the United States or of any of the states for defense or for war, or with the prosecution of war by the United States, shall be guilty of a felony of the second degree.

Enacted by Chapter 196, 1973 General Session

- * *No record it has ever been filed*
 - * *Is this conduct prosecuted as criminal mischief or under federal law?*
 - * *Hold*
-

76-8-803 Causing or omitting to note defects in articles used in preparation for defense or war.

Whoever intentionally makes or causes to be made or omits to note on inspection any defect in any article or thing with reasonable grounds to believe that the article or thing is intended to be used in connection with the preparation of the United States or any of the states for defense or for war, or for the prosecution of war by the United States, or that the article or thing is one of a number of similar articles or things, some of which are intended so to be used, shall be guilty of a felony of the third degree.

Enacted by Chapter 196, 1973 General Session

- * *No record it has ever been filed*
- * *Is this conduct prosecuted as criminal mischief or under federal law?*
- * *Hold*

76-8-902 Advocating criminal syndicalism or sabotage.

Any person who by word of mouth or writing advocates, suggests, or teaches the duty, necessity, propriety, or expediency of crime, criminal syndicalism or sabotage, or who advocates, suggests or teaches the duty, necessity, propriety, or expediency or doing any act of violence, the destruction of or damage to any property, the bodily injury to any person, or the commission of any crime or unlawful act as a means of accomplishing or effecting any industrial or political ends, change or revolution, or who prints, publishes, edits, or issues, or knowingly circulates, sells, or distributes, or publicly displays, any books, pamphlets, paper, handbill, poster, document, or written or printed matter in any form whatsoever, containing, advocating, advising, suggesting, or teaching crime, criminal syndicalism, sabotage, the doing of any act of violence, the destruction of or damage to any property, the injury to any person, or the commission of any crime or unlawful act, as a means of accomplishing, effecting, or bringing about any industrial or political ends or change, or as a means of accomplishing, effecting, or bringing about any industrial or political revolution, or who openly or at all attempts to justify by word of mouth or writing the commission or the attempt to commit sabotage, any act of violence, the destruction of or damage to any property, the injury of any person, or the commission of any crime or unlawful act, with the intent to exemplify, spread, or teach or suggest criminal syndicalism, or organizes, or helps to organize, or becomes a member of, or voluntarily assembles with, any society or assemblage of persons formed to teach or advocate, or which teaches, advocates, or suggests the doctrine of criminal syndicalism or sabotage, or the necessity, propriety, or expediency of doing any act of violence or the commission of any crime or unlawful act as a means of accomplishing or effecting any industrial or political ends, change or revolution, is guilty of a [felony of the third degree](#).

Enacted by Chapter 196, 1973 General Session

- * *No record it has ever been filed*
- * *Taken from Model Penal Code?*
- * *Actual conduct could be charged as party to offense*
- * *Does it criminalize civil disobedience discourse?*
- * *What conduct is included in "word of mouth or writing" (does it include social media, other forms of electronic communication)?*
- * *What are "industrial or political ends" and "industrial or political revolution"?*
- * *Does it infringe upon 1st amendment protections of free speech/press?*
- * *Contender for the longest run-on sentence in the code ☺*

76-8-903 Assembly for advocating criminal syndicalism or sabotage.

The assembly or consorting of two or more persons for the purpose of advocating, teaching, or suggesting the doctrine of criminal syndicalism, or to advocate, teach, suggest or encourage sabotage, or the duty, necessity, propriety or expediency of doing any act of violence, the destruction of or damage to any property, the bodily injury to any person, or the commission of any crime or unlawful act as a means of accomplishing or effecting any industrial or political ends, change or revolution, is hereby declared unlawful, and every person voluntarily participating therein, or by his presence aiding and instigating the same is guilty of a [felony of the third degree](#).

Enacted by Chapter 196, 1973 General Session

- * *No record it has ever been filed*
- * *Taken from Model Penal Code?*
- * *Actual conduct could be charged as party to offense*
- * *Does it criminalize civil disobedience?*
- * *What is an "assembly or consorting of two or more persons"?*
- * *What are "industrial or political ends, change or revolution"?*
- * *Does it infringe upon 1st amendment protection of freedom of assembly?*

76-10-1109 Confidence game -- Punishment as for theft -- Description in charge.

(1) Any person who obtains or attempts to obtain from any other person any money or property by any means, instrument or device commonly called a confidence game [shall be punished as in the case of theft of property of like value](#).

(2) In every indictment, information, or complaint under this section, it shall be deemed and held as sufficient

description of the offense to charge that the accused did, on, ____ (insert the date) unlawfully and knowingly obtain or attempt to obtain (as the case may be) from ____, (insert the name of the person or persons defrauded or attempted to be defrauded) his money or property (as the case may be) by means and by use of a confidence game.

Enacted by Chapter 196, 1973 General Session

** Filed 8 times total – 1 in 1990, 6 in 1991, 1 in 1997*

** Language in (2) is not used in actual pleadings*

** Has conduct been charged as communications fraud since 2000?*

78B-1-125 Jurors and witnesses -- Certifying excessive fees a felony.

Any clerk or judge of any court, county attorney, district attorney, or other officer who certifies false information as a fact, whereby any witness or juror shall be allowed a greater sum than otherwise entitled to under the provisions of this title, is [guilty of a felony](#).

Renumbered and Amended by Chapter 3, 2008 General Session

** No record it has ever been filed*

** Conduct is problematic; similar to fraudulent or forged behavior which is also a 3rd.*

** If conduct doesn't occur, the felony penalty could be a deterrent.*

** If it does occur, but has never been filed, it's deterrent value is questionable.*

Additional items discussed and held for further consideration:

HB155 – Special Session?

- Paul's Proposal (.05 on 2nd)
- Strike novice/foreign learner

41-6a-505 Sentencing requirements for driving under the influence of alcohol, drugs, or a combination of both violations.

- (3)(c) “supervised probation” – what is NHTSA definition of supervised probation? Should level of supervisions be consistent with a validated risk and needs assessment for impaired driving (Impaired Driving Assessment)?
- (5)(b) probation or parole “under this section may not be terminated.” – Never? Should not be terminated early? Must be “supervised” – court, state, private, county? Should early termination be used as an incentive if risk reduction can be demonstrated through validated assessment for impaired driving? What about other sections, such as commercial motor vehicle (53-3-418) not subject to parole termination?
- Invite Linda Hull to next Anomalies meeting
- Send representative of Sentencing Commission to the next DUI Committee meeting

77-40- Utah Expungement Act

- How to address 3rd party dissemination (non-governmental actors but not media)?
- Can statute prohibit/disallow state agencies from selling data?
- The Minnesota statute which was incorporated into a draft for discussion was considered.
- Questions regarding terminology remain, which would need to be addressed/clarified.
- Has Minnesota actually enforced their legislation?

- Is the contract that business screening service providers sign with the courts being violated?
- If so, it may be an issue for the courts to address.
- Courts have declined further action on judicial rule related to SB12. Rule was drafted more broadly than Expungement Working Group had discussed last year, but the Media Coalition strongly opposed it.
- A private right or cause of action may be a better sanction, but the cost of representation would still be an issue for most litigants.
- ACLU may have some record of complaints, but it may be difficult to locate individuals who have been denied employment or housing and even less likely litigation has addressed this issue specifically.

Racial Impact Statements

- Documents distributed
- Insufficient time to consider
- Will include on next agenda

2017 SENTENCING COMMISSION MEMBERS

Peter Stirba, Chair

Citizen Representative

Judge Vernice Trease

District Court Judge

Rich Mauro

Director, Salt Lake Legal Defenders

Paul Boyden

Executive Director, Statewide Association of Prosecutors

Scott Garrett

Juvenile Prosecutor

Susan Burke

Director, Juvenile Justice Services

Judge Julie Lund

Juvenile Court Judge

Chyleen Arbon

Board of Pardons and Parole

Rep. Brian King

Utah House of Representatives

Shima Baughman

Ethnic Representative

Ron Gordon

Executive Director, Commission on Criminal and Juvenile Justice

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Senator Gene Davis

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Utah House of Representatives

Rachelle Hill

Victims' Representative

Al Emery

Youth Parole Authority

Senator Daniel Thatcher

Utah State Senate

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Attorney General's Office

Sheriff Todd Richardson

Utah Sheriff's Association